

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation  
Against:**

**MICHAEL ARTHUR KASS, M.D.)**

**Case No. 800-2015-010965**

**Physician's and Surgeon's  
Certificate No. A37218**

**OAH No. 2017030355**

**Respondent**

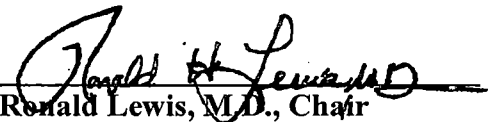
**DECISION**

**The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on January 11, 2018.**

**IT IS SO ORDERED: December 12, 2017.**

**MEDICAL BOARD OF CALIFORNIA**

  
Ronald Lewis, M.D., Chair  
Panel A

BEFORE THE  
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In the Matter of the Accusation Against:

MICHAEL ARTHUR KASS, M.D.

Physician's and Surgeon's Certificate  
No. A37218,

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**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, on October 20, 2017, in Los Angeles, California. Complainant was represented by Wendy Widlus, Deputy Attorney General. Michael Arthur Kass, M.D. (Respondent) was present and represented himself.

At the hearing, the ALJ was provided with Exhibits 4, 5, 6, 7, 8, 11 and 14 containing witness names and confidential medical information which is protected from disclosure to the public. Redaction of the documents to obscure this information was not practicable and would not provide adequate privacy protection. In order to prevent the disclosure of confidential information, concurrent with the issuance of this Proposed Decision the ALJ, on Complainant's unopposed motion, issued a Protective Order providing that Exhibits 4, 5, 6, 7, 8, 11 and 14 shall be placed under seal following their use in preparation of the Proposed Decision. These exhibits shall remain under seal and shall not be opened, except by order of the Medical Board of California, the Office of Administrative Hearings or by a reviewing court. A reviewing court, parties to this matter, their attorneys, or a government agency decision maker or designee under Government Code section 11517 may review the documents subject to this order provided that such documents are protected from release to the public.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on October 20, 2017.

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## FACTUAL FINDINGS

1. On December 27, 2016, Kimberly Kirchmeyer (Complainant) filed the Accusation while acting in her official capacity as the Executive Director of the Medical Board of California (Board), Department of Consumer Affairs.

2. Respondent filed a Notice of Defense requesting a hearing on the Accusation, and this matter ensued.

3. On July 31, 1981, the Board issued Physician's and Surgeon's Certificate Number A37218 to Respondent. That certificate was in full force and effect at all relevant times and is scheduled to expire on June 30, 2019.

4(a). On June 30, 2014, in the Superior Court for the State of California, County of Los Angeles, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor.

4(b). Respondent was placed on probation for 36 months under terms and conditions which included: payment of fines, fees, and restitution; performing 130 hours of community service; completion of a three-month first offender alcohol and drug counseling program; and a prohibition from driving a motor vehicle with any amount of alcohol or drugs in his system. Respondent was also ordered to serve 30 days in jail with credit for two days served and the balance to be served by electronic monitoring.

4(c). The facts and circumstances surrounding Respondent's 2014 conviction are as follows:

(1). On April 1, 2014, police officers were called to the scene of a traffic collision. A witness reported that while driving, she noticed Respondent's vehicle driving down the wrong side of the street coming directly toward the witness. Respondent did not attempt to avoid hitting the witness's vehicle. After the near collision, Respondent continued driving down the wrong side of the street and failed to stop at an intersection controlled by four-way stop signs. As he was driving, Respondent hit two parked vehicles, narrowly missed hitting a female pedestrian and her child, and then rear-ended a third vehicle which as stopped at a red light. The witness called 911 believing that Respondent may have had stroke.

(2). An officer who responded to the scene observed that Respondent appeared to be drowsy and that he had sluggish speech and watery eyes. Respondent also had a high pulse rate, and his pupils were slow to react to light. Respondent failed field sobriety tests. The blood sample he provided tested positive for barbiturates and opiates. The driver of the vehicle which Respondent rear-ended complained of pain to his nose, neck and back.

5. Respondent paid all fines, fees and restitution, and he completed the drug counseling program and the community service. Respondent was scheduled complete criminal probation in June 2017.

6. On July 29, 2016, Board Investigator Christopher Figueroa interviewed Respondent. During the interview, Respondent admitted that he had been under the influence of a muscle relaxant and Vicodin while driving his vehicle at the time of his arrest. He also admitted taking the drugs from the inventory he maintained at his medical office at that time.

7. In his testimony at the administrative hearing, Respondent's demeanor was candid and respectful, and he presented as a very credible witness. He expressed dismay and remorse for his crime.

8. Respondent has specialized in pediatrics since 1985, and he has owned and operated a private practice since 1990. Respondent's addiction began around 10 years ago, when he developed a reliance on opiates following his intestinal surgery. He began taking opiates without medical necessity, obtaining them from the stock bottle he kept at his pediatric practice for patients who needed pain medication but had no insurance to fill prescriptions. This got him "into trouble, and "over time [he] developed a heavier reliance on opiates." (Respondent's testimony.)

9. On the evening of his arrest, Respondent had completed a busy day at his office and was experiencing some muscle tension. He did not take any controlled substances before or during his work day. However, he likely took medication after leaving his office. Respondent left the office about 5:00 p.m., but thereafter he had no clear recollection of the events surrounding the accident and his arrest. Respondent believes he must have "blacked out," because he remembers only rear-ending the car at the red light. Upon reviewing the police report and drug test results (positive for barbiturates and opiates), Respondent recalled that he occasionally took Fioricet with codeine for muscle tension headaches. Fioricet contains a small amount of barbiturate, and codeine is an opiate.

10. As a physician, Respondent understands the pharmacological effects of taking drugs, and he acknowledged his crime resulted from his very bad decision to take drugs and then drive. He recalls that the accident, his failure to recall what happened, and the night in jail were humiliating and scary.

11. Respondent is committed to his sobriety, and he has been clean and sober since the night of his arrest over three years ago. He began attending Narcotics Anonymous (NA) meetings within two days of his arrest, and he has continued to regularly attend NA meetings. With the help of his sponsor, family and friends, Respondent has maintained his sobriety, including during the time when his partner was dying of cancer and narcotic pain medications were available in their home. Respondent no longer keeps a stock of opiates or any other controlled medication at his medical office.

12. On September 16, 2016, Investigator Figueroa made an unannounced visit to Respondent's medical office and obtained a urine sample from him. He sent the urine sample to a laboratory for analysis, and it was determined to be negative for drugs.

13. Respondent has the support of his sponsor who wrote a letter on his behalf and confirmed that Respondent has been clean and sober for over three years. His sponsor noted that Respondent has shown strength in recovery, even when faced with the hardship of caring for his gravely ill husband. Despite being exposed to numerous opiate medications for his husband's care, Respondent did not break his sobriety. Then after his husband passed away and while he was grieving and devastated, Respondent continued with his sobriety.

14. Although Respondent has continued operating his medical practice, he is contemplating retirement. During the time he was caring for his ill husband, Respondent lightened his workload, and he has resigned from staff at several hospitals. Respondent and his sister share caregiving responsibilities for their 90-year-old mother

15. Respondent acknowledged the Board's obligation to protect the public. However, he asserted that any probationary term ordering surrender of his DEA permit or total restriction on prescribing controlled substances would be a detriment to his patients for whom he may need to prescribe medications. He pointed out that with the Controlled Substance Utilization Review and Evaluation System (CURES), his prescribing history can be tracked to catch any inappropriate prescribing.

## LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), 2236, subdivision (a), and California Code of Regulations, title 16, section 1360, on the grounds that Respondent has been convicted of a crime substantially related to the qualifications, functions and duties of a licensed physician and surgeon, as set forth in Factual Finding 4, and Legal Conclusion 2.

2(a). California Code of Regulations, title 16, section 1360 provides, in pertinent part:

[A] crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.

2(b). Driving under the influence of alcohol or drugs, even if it is a single instance, is substantially related to the qualifications, functions and duties of a physician in that it evidences a potential unfitness to practice medicine. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407.)

3. Cause exists to revoke or suspend Respondent's physician's and surgeon's certificate, pursuant to Business and Professions Code sections 2234, subdivision (a), and 2239, on the grounds that Respondent used dangerous drugs to an extent or in such a manner as to be dangerous or injurious to Respondent and to the public, as set forth in Factual Finding 4.

4(a). Pursuant to California Code of Regulations, title 16, section 1360.1:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

(a) The nature and severity of the act(s) or offense(s).

(b) The total criminal record.

(c) The time that has elapsed since commission of the act(s) or offense(s).

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(f) Evidence, if any, of rehabilitation submitted by the licensee, certificate or permit holder.

4(b). "Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public." (*Griffiths v. Sup. Ct.* (2002) 96 Cal.App. 4th 757, 768, citing *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785–786.)

4(c). Business and Professions Code section 2229, provides, in pertinent part:

(a) Protection of the public shall be the highest priority for the Division of Medical Quality . . . and administrative law judges of the Medical Quality Hearing Panel in exercising their disciplinary authority.

(b) In exercising his or her disciplinary authority an administrative law judge of the Medical Quality Hearing Panel, [or] the division . . . shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee. . . .

4(d). Respondent's single drug-related driving conviction occurred over three years ago, and he has complied with all of his criminal probationary terms. Respondent has expressed dismay and remorse for his violation. Immediately after his arrest, Respondent began attending NA meetings and has been clean and sober to date. He continued his sobriety even while caring for his gravely ill husband with narcotic pain medications available in their home. Respondent has the support of his sponsor, who confirmed Respondent's sobriety and his dedication to remaining clean and sober. Respondent no longer keeps a stock of opiates or any other controlled medication at his medical office. Given his confirmed sustained sobriety and dedication to recovery, Respondent has shown a lesser chance of recidivism, although not a guarantee. Consequently, a short probationary period, with appropriate terms and conditions, should provide adequate protection of the public health, safety and welfare while also confirming Respondent's rehabilitation.

5(a). The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th Edition/2011) has been supplemented by the Board's Uniform Standards for Substance Abusing Licensees (2015) as follows:

(1). California Code of Regulations, title 16, section 1361 (Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees), provides in pertinent part:

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.), the Medical Board of California shall consider the disciplinary guidelines entitled "Manual of Model Disciplinary Orders and Disciplinary Guidelines" (12th Edition/2016) which are hereby incorporated by reference. Deviation from these orders and guidelines, including the standard terms of probation, is appropriate where the Board in its sole discretion determines by adoption of a proposed decision or stipulation that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the Uniform Standards for Substance-Abusing Licensees as provided in section 1361.5, without deviation, for each individual determined to be a substance-abusing licensee. . . . (Emphasis added.)

(2). California Code of Regulations, title 16, section 1361.5 (Uniform Standards for Substance-Abusing Licensees), provides in pertinent part:

(a) If the licensee is to be disciplined for unprofessional conduct involving the use of illegal drugs, the abuse of drugs and/or alcohol, or the use of another prohibited substance as defined herein, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code.

(b) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's disciplinary guidelines referenced in section 1361 that the Board determines is necessary for public protection or to enhance the rehabilitation of the licensee.

(c) The following probationary terms and conditions shall be used without deviation in the case of a substance-abusing licensee: (1) Clinical Diagnostic Evaluations and Reports; [¶] (2) Notice of Employer or Supervisor Information; [¶] (3) Biological Fluid Testing; [¶] (4) Group Support Meetings; [¶] (5) Worksite Monitor Requirements and Responsibilities; [¶] and (6) The licensee must remain in compliance with all terms and conditions of probation. . . . (Emphasis added.)

5(c). The language of California Code of Regulations, title 16, sections 1361 and 1361.5 indicate that, although the Uniform Standards for Substance-Abusing Licensees must be followed without deviation, variation from the Manual of Model Disciplinary Orders and Disciplinary Guidelines is allowed. Consequently, a total or partial restriction on prescribing controlled substances, the surrender of Respondent's Drug Enforcement Administration (DEA) permit, or a prohibition of solo practice, contained in Manual of Model Disciplinary Orders and Disciplinary Guidelines, are not mandatory terms of probation.

5(d). The totality of the evidence established that, given Respondent's three years of sustained sobriety, three years of Board-ordered probation should protect the public health, safety and welfare. Additionally, the evidence established no need for a total or partial restriction on prescribing controlled substances, the surrender of Respondent's DEA permit, or a prohibition of solo practice. Consequently, those terms shall not be included in the probationary order set forth below.<sup>1</sup>

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<sup>1</sup> Additionally, in light of the provisions in the mandatory terms for "Biological Fluid Testing" and "Violation of Probation Condition for Substance-Abusing Licensees" (see Order, paragraphs 3 and 6), the language of the standard term, "Controlled Substances - Abstain From Use" (see Order, paragraph 19) has been amended to harmonize with the language of the mandatory terms.



## ORDER

Physician's and Surgeon's Certificate Number A37218, issued to Respondent, Michael Arthur Kass, M.D., is revoked. However, the revocation is stayed, and Respondent is placed on probation for three years upon the following terms and conditions.

### **1. Clinical Diagnostic Evaluations and Reports:**

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to Respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that Respondent is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; Respondent's history; Respondent's documented length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use); Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical history and current medical condition; the nature, duration and severity of Respondent's substance abuse problem or problems; and whether Respondent is a threat to himself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than 10 days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an

extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether Respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on Respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that Respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the Board or its designee.

## **2. Notice of Employer or Supervisor Information**

Within seven days of the effective date of this Decision, Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's worksite monitor, and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, and monitoring. For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff privileges.

## **3. Biological Fluid Testing**

Respondent shall immediately submit to biological fluid testing, at Respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board

or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order a Respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by the Respondent.

During the first year of probation, Respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, up to five years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, Respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

(a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.

(b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines

(c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.

(d) Its specimen collectors observe the collection of testing specimens.

(e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.

(f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one business day and negative test results within seven business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order Respondent to cease practice and instruct Respondent to leave any place of work where Respondent is practicing medicine or providing medical services. The Board shall immediately notify all of Respondent's employers, supervisors and work monitors, if any, that Respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms “biological fluid testing” and “testing” mean the acquisition and chemical analysis of a Respondent’s urine, blood, breath, or hair.

For purposes of this condition, the term “prohibited substance” means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by Respondent and approved by the Board, alcohol, or any other substance the Respondent has been instructed by the Board not to use, consume, ingest, or administer to himself or herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, Respondent has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance Respondent’s rehabilitation.

#### **4. Substance Abuse Support Group Meetings**

Within 30 days of the effective date of this Decision, Respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years’ experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with Respondent within the last five years. Respondent’s previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing Respondent’s name, the group name, the date and location of the meeting, Respondent’s attendance, and Respondent’s level of participation and progress. The facilitator shall report any unexcused absence by Respondent from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

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## **5. Worksite Monitor for Substance-Abusing Licensee**

Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring the Respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with Respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but Respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five years, and shall sign an affirmation that he or she has reviewed the terms and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with Respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding Respondent's behavior, if requested by the Board or its designee; and review Respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and Respondent's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; Respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) Respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance; (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by Respondent.

Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, Respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

## **6. Violation of Probation Condition for Substance-Abusing Licensees**

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as 30 calendar days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order;

- (2) Order practice limitations;
- (3) Order or increase supervision of Respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke Respondent's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

## **7. Notification**

Respondent shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

## **8. Obey All Laws**

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

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## **9. Quarterly Declarations**

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

## **10. Probation Unit Compliance**

Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Respondent shall not engage in the practice of medicine in Respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

## **11. Interview with the Board or Its Designee**

Respondent shall be available in person for interviews either at Respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

## **12. Residing or Practicing Out-of-State**

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception

of this condition and the following terms and conditions of probation: Obey All Laws and Probation Unit Compliance.

Respondent's license shall be automatically cancelled if Respondent's periods of temporary or permanent residence or practice outside California totals two years. However, Respondent's license shall not be cancelled as long as Respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

### **13. Failure to Practice Medicine - California Resident**

In the event Respondent resides in the State of California and, for any reason, Respondent stops practicing medicine in California, Respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if Respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

### **14. Violation of Probation**

Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

### **15. License Surrender**

Following the effective date of this Decision, if Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request the voluntary surrender of Respondent's license. The

Board reserves the right to evaluate Respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall, within 15 calendar days, deliver Respondent's wallet and wall certificate to the Board or its designee, and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of Respondent's license shall be deemed disciplinary action.

If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

#### **16. Probation Monitoring Costs**

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

#### **17. Supervision of Physician Assistants and Advanced Practice Nurses**

During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

#### **18. Alcohol - Abstain From Use**

Respondent shall abstain completely from the use of products or beverages containing alcohol.

#### **19. Controlled Substances - Abstain From Use**

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

In light of Probationary Conditions 3 and 6 above, if an accusation and/or petition to revoke probation is filed while a cease practice order is in place, Respondent shall not resume the practice of medicine until the final decision on an accusation and/or a petition to

revoke probation is effective, until Respondent is notified in writing by the Board or its designee that he may resume the practice of medicine, or until the cease practice order dissolves, whichever occurs earlier. An accusation and/or petition to revoke probation shall be filed by the Board within 30 days of the notification to cease practice. If Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide Respondent with a hearing within 30 days of the request, unless Respondent stipulates to a later hearing. If the case is heard by an Administrative Law Judge alone, he or she shall forward a proposed decision to the Board within 15 days of submission of the matter. Within 15 days of receipt by the Board of the Administrative Law Judge's proposed decision, the Board shall issue its decision, unless good cause can be shown for the delay. If the case is heard by the Board, the Board shall issue its decision within 15 days of submission of the case, unless good cause can be shown for the delay. Good cause includes, but is not limited to, non-adoption of the proposed decision, request for reconsideration, remands and other interlocutory orders issued by the Board. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 30 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

## **20. Controlled Substances- Maintain Records and Access to Records and Inventories**

Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any recommendation or approval which enables a patient or patient's primary caregiver to possess or cultivate marijuana for the personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

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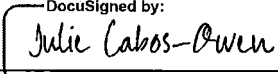
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## 21. Completion of Probation

Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

DATED: November 17, 2017

DocuSigned by:  
  
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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings

KAMALA D. HARRIS  
Attorney General of California  
E. A. JONES III  
Supervising Deputy Attorney General  
WENDY WIDLUS  
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*Attorneys for Complainant*

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-010965

**MICHAEL ARTHUR KASS, M.D.**  
**PO BOX 881**  
**CULVER CITY, CA**  
**90232**

**A C C U S A T I O N**

**Physician's and Surgeon's Certificate**  
**No. A 37218,**

Respondent.

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about July 31, 1981, the Medical Board issued Physician's and Surgeon's Certificate Number A 37218 to MICHAEL ARTHUR KASS, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2017, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code("Code") unless otherwise indicated.

4. Section 2227 of the Code states that a licensee who is found guilty of a violation of the Medical Practice Act (Bus. & Prof. Code, § 2000 et seq.), or who has entered into a stipulation for disciplinary action with the Board, may have his license revoked; suspended for a period not to exceed one year; placed on probation and required to pay the costs of probation monitoring; be publicly reprimanded; or have any other action taken in relation to discipline as the Board may deem proper.

5. Section 2236 of the Code states:

“(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

“(b) The district attorney, city attorney, or other prosecuting agency shall notify the Division of Medical Quality of the pendency of an action against a licensee charging a felony or misdemeanor immediately upon obtaining information that the defendant is a licensee. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license as a physician and surgeon.

“(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the board. The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

“(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is

1 deemed to be a conviction within the meaning of this section and Section 2236.1. The record of  
2 conviction shall be conclusive evidence of the fact that the conviction occurred.”

3 6. Section 2239 of the Code states:

4 “(a) The use or prescribing for or administering to himself or herself, of any controlled  
5 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
6 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
7 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
8 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
9 consumption, or self-administration of any of the substances referred to in this section, or any  
10 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
11 conclusive evidence of such unprofessional conduct.

12 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
13 deemed to be a conviction within the meaning of this section. The Division of Medical Quality<sup>1</sup>  
14 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing  
15 may order the denial of the license when the time for appeal has elapsed or the judgment of  
16 conviction has been affirmed on appeal or when an order granting probation is made suspending  
17 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
18 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
19 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
20 information, or indictment.”

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26 <sup>1</sup> Business and Professions Code section 2002, effective January 1, 2008, provides that  
27 unless otherwise expressly provided, the term “Board” as used in the State Medical Practices Act  
28 (Bus. & Prof. Code, § 2002 et seq.) means the “Medical Board of California,” and references to  
the “Division of Medical Quality” and “Division of Licensing” in the Act or any other provision  
of law shall be deemed to refer to the Board.



1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 7. Respondent is subject to disciplinary action under Code section 2236 in that he was  
4 convicted of a crime which is substantially related to the qualifications, functions, or duties of a  
5 physician and surgeon. The circumstances are as follows:

6 8. On or about April 21, 2014, a Misdemeanor Complaint was filed in the Superior  
7 Court of California, County of Los Angeles in the case entitled *The People of the State of*  
8 *California v. Michael Arthur Kass*, Case Number 4WA00641. Respondent was charged with the  
9 following allegations:

10 "COUNT 1: On or about April 1, 2014, in violation of Section 23152(e) of the Vehicle  
11 Code (DRIVING UNDER THE INFLUENCE OF A DRUG), a MISDEMEANOR,  
12 MICHAEL ARTHUR KASS did unlawfully drive a vehicle while under the influence of a  
13 drug.

14 "COUNT 2: On or about April 1, 2014, in violation of Section 20002 (a) of the Vehicle  
15 Code (HIT AND RUN), a MISDEMEANOR, MICHAEL ARTHUR KASS did  
16 unlawfully drive a vehicle which was involved in an accident resulting in damage to  
17 property who did willfully and unlawfully fail to stop and locate and notify the driver and  
18 owner of the vehicle and provide his driver's license and other valid evidence of  
19 identification."

20 9. On or about June 30, 2014, the Court amended *The People of the State of California*  
21 *v. Michael Arthur Kass*, Case Number 4WA00641 by adding an additional charge as Count 3:

22 "COUNT 3: On or about April 1, 2014, in violation of Section 23103 (a) of the Vehicle  
23 Code (RECKLESS DRIVING), a MISDEMEANOR, MICHAEL ARTHUR KASS did  
24 drive a vehicle upon a highway in willful or wanton disregard for the safety of persons or  
25 property."

26 10. On or about June 30, 2014, Respondent pled Nolo Contendere to Count 3. The Court  
27 sentenced Respondent to 3 years summary probation on terms and conditions, which included:

28 A. Obey all laws.

- 1 B. Obey all orders, rules, and regulations, and directives of the court and jail.
- 2 C. Do not drive a motor vehicle with a measurable amount of alcohol or
- 3 drugs in his blood and submit to a chemical test of his blood on demand of any peace officer,
- 4 probation officer, or mandatory supervision officer.
- 5 D. Enroll in and successfully complete a 3 month first offender alcohol and
- 6 other drug education and counseling program.
- 7 E. Pay a fine of \$1824.00.
- 8 F. Not drive unless in possession of a valid driver's license and insurance.
- 9 G. Perform 130 hours of community service.
- 10 11. The Court dismissed Counts 1 and 2 in the interests of justice.
- 11 12. The facts and circumstances of the above conviction are as follows.
- 12 A. On or about April 1, 2014, Los Angeles Police Department (LAPD)
- 13 officers were called to the scene of a traffic collision at Oxford and Washington Boulevards in
- 14 Marina Del Rey, California. Witnesses told the LAPD officers they observed a car driven by
- 15 Respondent hit two parked cars and then rear end a third car which had stopped at a stop light.
- 16 B. An LAPD officer contacted Respondent and observed him to display
- 17 thick, sluggish speech, dry mouth, watery eyes, and appear to be drowsy. Respondent had a high
- 18 pulse rate, and his pupils were very slow to react to light.
- 19 C. Respondent was given pre demonstrated Field Sobriety Tests which he
- 20 failed to satisfactorily perform. Based on all of the above information the officer formed the
- 21 opinion that Respondent was under the influence of a central nervous system depressant.
- 22 D. Respondent provided a blood sample to test for the presence of drugs.
- 23 Respondent's blood was analyzed and tested positive for barbiturates and opiates.
- 24 E. The driver of the car Respondent rear ended at the stop light complained
- 25 of pain to his nose, neck, and back.
- 26 //
- 27 //
- 28 //

**SECOND CAUSE FOR DISCIPLINE**

(Excessive Use of Dangerous Drugs)

13. Respondent is subject to disciplinary action under Code sections 2239, in that he used dangerous drugs to the extent or in such a manner as to be dangerous or injurious to himself, other persons, and the public. The facts and circumstances in the First Cause for Discipline are incorporated herein as if fully set forth.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Medical Board of California issue a decision:

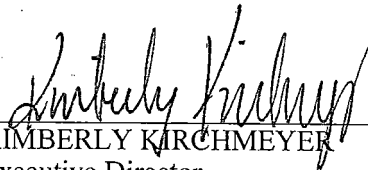
4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 37218,  
5 issued to Michael Arthur Kass, M.D.;

6 2. Revoking, suspending or denying approval of Michael Arthur Kass, M.D.'s authority  
7 to supervise physician assistants, pursuant to section 3527 of the Code;

8 3. Ordering Michael Arthur Kass, M.D., if placed on probation, to pay the Board the  
9 costs of probation monitoring; and

10 4. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: December 27, 2016

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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